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A REVIEW OF THE LEGAL REGIME FOR BUSINESS RESTRUCTURING AND BANKRUPTCY IN JORDAN

Final Report

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EXECUTIVE SUMMARY

What is conventionally known as a country's "bankruptcy" regime is unique among commercial laws and procedures. This is because determinations in bankruptcy and the rearrangement of firm capital, management and ownership (called restructuring or business restructuring) are at once retroactive and prospective. And because such decisions entail a judgment on the comprehensive performance of the debtor. Finally, such complicated determinations are made in the most exacting of commercial contexts – when the debtor is, by definition, *in extremis* or nearly so. A regime that facilitates restructuring and resolves bankruptcy issues thus determines questions of capital and resource allocation for a given debtor, and sometimes for an entire industry. A country's entire financial community, to say nothing of international financiers, are implicated if not actively involved.

As such, business restructuring and bankruptcy policy offer the classic and perhaps the only case in which free market dynamics permit and even encourage active economic policy-making from judges, lawyers and management consultants. No other judicial involvement in the commercial law context even comes close. For this, bankruptcy and restructuring policy are a bellwether in gauging any country's progress toward market liberal economic reforms.

With this in mind, USAID authorized the AMIR Capital Markets Component in an SOW of April 19 to examine the adequacy of the present regime for bankruptcy and business restructuring in Jordan, focusing most immediately on both a diagnostic review of the articles on bankruptcy and restructuring in the Jordanian Commercial Code and recommendations for reform consistent with "internationally accepted best practices" going forward. Given the nature of the task, AMIR Capital Markets promptly formed an interdisciplinary legal and business team of both local and international experts to conduct the assessment. Mr. Kelly's short-term consultancy between May 14 and May 28 in large part formed the catalyst for the focused effort of the interdisciplinary team to date and has culminated in this report, which is coauthored by team members.

In brief, most economies in transition have bankruptcy and restructuring regimes. But few are in fact a prominent feature of a transitional economy's actual policy-making. This is because businesses do not use either formal bankruptcy or restructuring procedures. As the field work memorialized in Appendix A makes clear, Jordan is no exception here. At the same time, aspects of the Jordanian regime offer clues as to the direction a reform effort should take, thus offering the opportunity to bring to joinder the two mandates of the SOW, diagnosis and recommendation. Both processes inevitably lead to the question: why is reform of the business restructuring and bankruptcy regime in Jordan important - and why now? Among the answers most appropriate are:

-more efficient use of local capital – an economy aims to have local capital be used in the most efficient manner, facilitating the participation of all sectors in economic growth. This is particularly relevant when, as in Jordan's case, a lack of balance in foreign investment exists. Hence, a reform law that supports transparent business restructuring and bankruptcy proceedings dealing with the interests of all providers of capital and resolves issues of capital and asset allocation in a manner that is comprehensive and binding is of the essence.

-accelerated foreign investment – Jordan needs to accelerate the transfers of new technologies and management strategies. But these follow, not precede, an inflow of foreign capital. And foreign capital will only come if investors have confidence in a reform law for restructuring and bankruptcy that has been stable, predictable and, of necessity, working.

-continued sophistication in capital markets – the salutary development of Jordan's capital market rests on the principle of, among others, transparent disclosure of business opportunity, which transparency at point of investment will be advanced when startups as would be debtors realize that, in a "worst case" investment scenario, the various aspects of their business operations will be made transparent in any case, as represented in a reform law.

-increased availability of bank credit - the phenomenon of firms having multiple creditors and becoming the object of sophisticated loan syndications will increase when creditors have the assurance that they can participate in all inclusive, transparent and multilateral business restructuring negotiations that are binding on all concerned, as embodied in a reform law.

Each of the above four advantages demands a regime that can actually be implemented and that means giving debtors and creditors the economic motivation to participate in business restructuring and bankruptcy. A summary of Part I of the report brings to bear four key standards for both diagnosis and recommendation. A reform law will provide the necessary economic motivation to the domestic and international financial communities and the other stakeholders in an increasingly interactive corporate economy to participate in the new regime for business restructuring and bankruptcy, provided that the reform law:

**provides for resource allocation that is efficient rather than punitive* – few Jordanian firms file for restructuring or bankruptcy as the present law stigmatizes debtor failure to pay and gives the creditor little incentive to resolve a dispute but thorough less than transparent one-on-one dealing with the debtor. The discussion in Title I of the diagnosis and recommendation in Part I identifies this problem and offers economic incentives, rather than punitive measures, to bring the debtor and the creditors together in a constructive, comprehensive and transparent dialogue as to future direction.

**maximizes the number and influence of economic actors and minimizes that of administrative ones* - the present law takes little account of either the economic differences among creditors or of their need to participate and guide bankruptcy procedures and especially restructuring procedures. It appears to instead rely on a vague, residual authority of the court, that body having both the least economic interest in reaching a resolution and the least business acumen to do so. Title II of the diagnosis and recommendations in Part I clears the path for the entry of the debtor and creditors, the economic actors, into restructuring and bankruptcy proceedings. Titles III and IV elaborate in much greater detail than the present law on the workings of such institutions as trustees and classes of creditors to ensure a more participatory, inclusive business restructuring and bankruptcy process.

**facilitates economic calculations by setting forth a "roadmap" for the economic actor at each stage of proceedings* - the present law provides merely a theoretical basis for

restructuring as an alternative to bankruptcy, leaving less transparent, unilateral business liquidation as the practical alternative for Jordanian businesses. Titles III and IV of the diagnosis and recommendations in Part I are designed to steer economic calculations away from liquidation in favor of restructuring and the legitimate reliance interests of all parties in the terms of the restructuring agreement, even in the context of bankruptcy proceedings.

* *confines the regime's social policy aim to efficient resource allocation* – though not as explicitly in favor of statist social policies as the laws of some other transitional economies, the present Jordanian law contains normative aspects that impede the goal of efficient capital flow and resource allocation, especially through use of punitive measures and the prohibition on "fraudulent bankruptcy" as an instrument to avoid obligation. As noted, Title I of the diagnosis and recommendation in Part I relies on economic incentive to substitute for punitive measures as a means to bring parties to restructuring and bankruptcy proceedings. Titles I-VI throughout even hypothesize that it may be possible to create a reform law that does not employ the culturally pejorative term "bankruptcy" in order to encourage popular use of the reform business restructuring and bankruptcy processes (opting for the more forward looking, constructive term "judicially approved discharge" or "JAD" instead of the term "bankruptcy"). Part II on reform in the overall context of Jordanian law further suggests that such examination of untoward debtor behavior as occurs under civil law be confined to an action by an individual aggrieved creditor against the debtor under a reform Law on Fraudulent Conveyances, outside the restructuring and bankruptcy processes.

Appendices A and B respectively set for the field and analytical work supporting these points of Executive Summary.

PART I

POLICY MATRIX - Diagnostic on the Present Articles on Bankruptcy in the Commercial Code and Proposed Recommendations for a Reform "Law on Business Restructuring and Judicially Approved Discharge"

The tripartite matrix identifies issues by statement of problem, solution and rationale. It is neither designed to be a detailed analysis of each aspect of the current Jordanian reorganization and bankruptcy nor a "from scratch" diagram of a reform Law on Business Restructuring and Judicially Approved Discharge. Rather, the Policy Matrix is designed as a first step to considering the terms of a substantially revised Jordanian law. As such, it will both identify in capsulated form the inadequacies of the present articles in the Commercial Code (called herein the "present law") and offer an outline of proposed solutions and the rationale for advancing same. It is of nature a skeletal statement of both problems and solutions. The analysis is neither reactive in focusing exclusively on the present law nor theoretical in entirely ignoring it. Rather, the Policy Matrix is designed as a blueprint for the eventual drafting of a reform law. Accordingly, the order of presentation below conforms neither to the order to the text of the current law nor to a listing of problems in the order of those having greatest priority. Rather, it is an attempt at a roadmap, a practical plan of organization to assist in the commencement of drafting a reform law. It attempts to present the issues in logical sequence.

Business Restructuring and Judicially Approved Discharge: Nature and Goals (Basis for Title I of Reform Law)

#1 Problem Assessment: The present law does not explicitly define or distinguish restructuring from Judicially Approved Discharge (or JAD, a euphemism for bankruptcy) as a matter of definition.

Proposed Solution: There is a need for substantially revised initial articles in a reform law which

define restructuring as a public and transparent process by which a debtor's disputes with debtor's creditors are simultaneously and publicly resolved through court supervision pursuant to voluntary agreement among the parties, the terms of which may, but need not, result in partial liquidation of debtor assets and/or partial discharge, and the goal of which is continuation of at least some part of debtor's business. Business restructuring is firmly embedded in Jordanian jurisprudence as evidence of the principle that reduction or rescheduling of debt cannot take place absent express legal authorization. Art. 334, Civil Code. Additional articles should discuss JAD. Though business restructuring entails some element of court approval, JAD is different. It is a court-supervised process the end of which results in full discharge of debtor obligations by means of full liquidation. Both restructuring and JAD entail the retirement of debt through the explicit consideration of the collective interests of debtor's creditors and their active participation in the restructuring and JAD processes.

Rationale: There is a need to both give the debtor and creditor the motive to use the laws and distinguish restructuring and JAD from liquidation under Articles 266 - 286 of the Companies Law. Reference to the means of liquidation and the goal of discharge gives the debtor motive to file; reference to collective creditor participation gives the creditor motive to file as well as distinguishes restructuring and JAD from mere liquidation, which is a unilateral exercise on the part of the debtor.

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#2 Problem Assessment: The present law has a narrow understanding of the stay of proceedings as a feature of filing for restructuring or JAD.

Proposed Solution: Revised articles should expand and amend Articles 295 and 329 of the present law to apply the stay to prohibit informal collection efforts by creditors against the debtor as well as formal lawsuits for collection. Such articles should also apply the stay to put a stop to foreclosure and execution proceedings on secured property.

Rationale: Along with discharge and collective creditor involvement, the stay gives both debtors and creditors motive to use the reform law. The stay operates to both protect the debtor and assure the creditor that the single creditor's interests are protected relative to the claims of other creditors, pending comprehensive treatment of creditor claims. The stay also distinguishes restructuring or JAD under the reform law from liquidation under the Companies Law, the latter of which does not provide for a stay. The stay on foreclosure and execution against secured property is essential to providing secured parties with the incentive to participate in restructuring and JAD proceedings.

Thus, in the initial Title of the reform law, debtors and creditors are: (1) immediately given motivation to use the reform law through reference to the long-term goals of discharge and liquidation through creditor participation; (2) told what distinguishes the reform law from mere liquidation procedures; and (3) advised that a short-term benefit of using the reform law is the stay, which is a unique feature of restructuring and JAD.

#3 Problem Assessment: The present law does not ensure maximum flexibility in transition from restructuring to JAD without initiating new proceedings and *vice versa*. Articles 290 - 315 and 383 - 408 of the present law deal with restructuring either in the context of

bankruptcy prevention or through "simple agreement" following judicial declaration of bankruptcy as a means of avoiding indiscriminate liquidation without substantial creditor input. Articles 290 - 315 of the present law perceive restructuring and JAD (i.e., bankruptcy) as opposites while Articles 383 – 408 see them as inseparable. The present law does not view restructuring and JAD as two distinct choices, either of which might be viewed as contemporaneous options.

Proposed Solution: New articles should explicitly provide that upon a vote of two-thirds of creditors and three-quarters of secured creditors, a JAD proceeding may become a restructuring proceeding and *vice versa*.

Rationale: The stark choice between a preventive concordat and a declaration of bankruptcy in the present law reinforces the public perception that views bankruptcy as a drastic measure, a "point of no return." The present law itself thereby condemns itself to irrelevance and disuse. The proposed solution not only reinforces the view of Articles 383 - 408 of the present law that the "simple agreement" may be an alternate to bankruptcy and total liquidation, but provides that the debtor and creditors may opt out of the JAD construct and enter into a restructuring at any time, even after the court has formally declared a party subject to the final stages of JAD (i.e., in the present law, when the court declares the debtor bankrupt). This will facilitate filings for JAD by shattering the perception of tragic inevitability currently characterizing the Jordanian business community's views toward traditional bankruptcy. It will also facilitate filings for restructuring. This is because the possibility of conversion from restructuring to JAD will give the creditors leverage over the debtor in restructuring discussions, thereby convincing creditors that they will not be involved in endless dilatory restructuring discussions with the debtor.

#4 Problem Assessment: Article 326 and sub article 3 of Article 327 of the present law are heavily punitive.

Proposed Solution: Part of the solution has already been provided *supra*. It is to use such means as discharge and creditor participation in restructuring and JAD proceedings to provide economic incentives for debtor and creditor filings, respectively.

Rationale: The punitive character of the present law has helped ensure that it will not be used. This is to the detriment of a public and transparent decision-making process that enjoys the confidence of the public by ensuring the flow of resources based on neutral economic considerations.

#5 Problem Assessment: Discharge is the goal of bankruptcy from the debtor's stand point, yet the present law neither defines when discharge occurs nor sets forth what obligations are not subject to discharge.

Proposed Solution: Two new articles should address the problem. The first should stipulate in the most exact, concrete terms what evidences discharge and when discharge is granted. As a juridical matter this would occur: (1) by a court order attending acceptance of the restructuring plan; (2) in the context of JAD, upon the earlier of: (a) the final judicial order pronouncing the debtor bankrupt and dissolved; or (b) actual liquidation of the company. A second article

would set forth those obligations not subject to discharge (typical examples include fines and penalties imposed for violations of penal or criminal laws and taxes due as a result of tax evasion).

Rationale: As noted *supra*, specificity in the law enhances the law's credibility. Article 418 of the present law discusses priorities for such matters as taxes due, yet the law fails to discuss exemptions from discharge. Clear guidelines are necessary in order to underline the commitment of the law to discharge as a goal and to preclude the judiciary from arbitrary, inconsistent decision-making on this central point.

Commencement of Proceedings for Business Restructuring or Judicially Approved Discharge (Basis for Title II of a Reform Law)

#1 Problem Assessment: In requiring the debtor to file when the debtor has not made payment, the present law neither gives the debtor the incentive to file nor express guidance as to when the debtor should file.

Proposed Solution: A reform law should abolish requirements to file for restructuring or JAD proceedings. Sufficient economic incentives for creditor filing should be provided, as indicated in guidelines for a revised Title I *supra*, so that no legal obligation for filing need be imposed on the debtor. Article 290 of the present law would thereby be effectively be repealed by permitting creditors to file for restructuring at any time.

Rationale: The compulsory approach of Article 318 of the present law to filing for restructuring or bankruptcy has not worked; the present Jordanian law is not used. In addition to providing insufficient economic incentive to file, the present Jordanian law leaves it to guesswork as to when the debtor should file by confusing the debtor's unwillingness to pay for the debtor's inability to repay. Restructuring and JAD concern only the latter. As long as a reform law gives sufficient incentive to creditor filings by providing for creditor participation in the JAD and restructuring processes, as set forth *supra*, the debtor's failure to enter bankruptcy voluntarily need not be of primary concern. Mere filing should not occasion great burdens. For example, Article 175 of the Companies Law does not require shareholder approval to affect a filing in restructuring or JAD.

#2 Problem Assessment: The present law provides neither the debtor nor the creditor with specific direction as to the "where" and "how" of filing.

Proposed Solution: There is a need for new articles that both precisely identify courts of first instance as the courts handling restructuring and JAD and that amend Article 317 of the present law in the interests of flexibility to provide that filing will take place in the court nearest the location of the debtor's or the creditor's principal place of business, at the election of the party filing. An additional article should require that the party filing should file the agreement giving rise to the indebtedness in question attached to a simple, signed statement by the filing party of the circumstances giving rise to indebtedness, including creditor demands on the debtor, as the basis for the filing.

Rationale: The debtor of modest means, and even the creditor, needs to be informed by the law as to where and how to at least begin proceedings for restructuring and JAD. A reform law should provide concrete instruction on where and what to file.

#3 Problem Assessment: The present law exercises no control over suits for JAD and restructuring brought by creditors, thus giving rise to abuse of the court system and these processes.

Proposed Solution: A new article should confine suits for JAD and restructuring to a "significant group" of creditors, defined in terms of: (a) creditors holding some percentage of the total indebtedness of the debtor; or (b) a certain number of secured creditors of the debtor. A second article would also exclude "controlling persons" of the debtor from being considered as creditors for filing purposes. Controlling persons would be: (a) employees, officers, directors or managers of the debtor; (b) parties having a direct or indirect equity or partnership interest in the debtor's estate that equals or exceeds some % of the capital or the debtor; (c) parties having the option through management contract or other device to purchase an interest in the debtor's estate that equals or exceeds a certain percentage (e.g., 5%); and (d) representatives, agents or employees of any party who is deemed a controlling person under (a)- (c). (This second article would make clear that disqualification from being considered a creditor for filing purposes in no way prejudices the rights of such creditor to participate in restructuring and JAD proceedings or jeopardizes such creditor's ability to recover on indebtedness). Finally, a third article would limit creditor filings when the indebtedness of the creditor is less than the greater of: (a) some amount – say, 10,000 JD; or (b) one half of any amount legally required for capitalization of the debtor.

Rationale: Restructuring and JAD proceedings are not to be confused with routine lawsuits for collection. Filings for JAD or restructuring by creditors in particular offer the potential for abuse of the court system unless some legal limit on filings is imposed. Such statutorily imposed limits will relieve an otherwise congested court docket. See AMIR Report, "Issues of Jordanian Civil and Commercial Justice", March, 2000. Again, such limits do not totally foreclose creditor remedies – actions for collection and against the debtor for fraudulent conveyances, see Part II - will remain available.

Proceedings for Business Restructuring (Basis for Title III of a Reform Law)

#1 Problem Assessment: Consistent with the initial Problem Assessment *supra*, the present law not only does not define restructuring, it does not identify the means undertaken to achieve same.

Proposed Solution: A new article should expressly indicate that, subject to the terms of the reform law, restructuring may be achieved by any means deemed appropriate by the parties, including but not limited to asset recovery through partial liquidation, partial discharge, debt-to-equity conversion, changes in the classes of shareholders and changes in the management of the debtor, the "write off" of debt and interest payments or a combination of these.

Rationale: The present law does not convey a sense of the broad possibilities permitted by restructuring. Parties will only be motivated to engage in restructuring if they have this awareness.

#2 Problem Assessment: The restructuring provisions of Articles 290 - 315 (relative to concordat) and Articles 363 - 408 (relative to the so called "simple agreement") of the present law employ different standards, although each results in restructuring. For example, creditor filing is precluded in the former case but, on the other extreme, creditor super majority consent is required for the latter. This lack of uniformity precludes prompt resolution of indebtedness issues by postponing effective creditor involvement early in the restructuring proceedings. It thus perpetuates economic inefficiencies in failing firms.

Proposed Solution: A revised law should feature omnibus restructuring procedures, with standards that apply at all times, regardless of whether a particular procedure such as a declaration that the debtor will proceed to the final stages of JAD (i.e., regardless of whether the court has declared a party bankrupt under the present law).

Rationale: Articles 290-315 of the present law seem to ascribe great importance to restructuring through concordat as the means to avoid JAD. Yet, the same logic should also apply to avoidance of JAD later in the proceedings.

#3 Problem Assessment: The present law does not recognize that differences among creditors can and should impact the restructuring process.

Proposed Solution: Three new articles should at a minimum recognize that differences exist among priority, secured and non-secured creditors and that, at a minimum, each of these needs to be represented as through its own official class in the negotiation of a restructuring plan. A second article should obligate the court to create additional classes of general creditors if: (i) two-thirds of the general creditors approve such division; (ii) there is an economic basis for such division (e.g., certain non-secured creditors have claims against the debtor based on the failure of a certain part of the debtor's business to perform or certain unsecured creditors have a common interest by having had claims due at the same time). A third article would stipulate that each class be represented by a trustee, having the qualifications and powers stipulated below.

Rationale: Article 338, sub article 3 of the present law states that a different number of trustees may exist, thus intimating that creditors may have divergent interests. The solution proposed elaborates.

#4 Problem Assessment: Articles 373-74 of the present law provide for filing of proof of claim but only discuss same in the context of JAD, thus precluding clear identification of restructuring and meaningful participation of creditors in the restructuring process.

Proposed Solution: A revised article should require compulsory court notification to the public of a filing for restructuring and require the filing of creditor proofs of claim within 30 days of such public notice. The revised article would continue that creditors would file the same information as that required for the initial filing noted *supra* and that creditors subject to the

"significant group" standard for initially filing need not again provide information as to proof of claim.

Rationale: The present law reflects the erroneous view that classes of creditors are only relevant to a plan of distribution in JAD. Yet, creditors have a both vital role and an incentive to engage in the restructuring process. The solution proposed will encourage creditor filings for restructuring.

#5 Problem Assessment: The present law does not explicitly state the relationship between refinancing or recapitalization and restructuring.

Proposed Solution: A new article is necessary that subordinates payment on new credit to the payment of indebtedness that exists at the time of the filing for restructuring, provided that this prior indebtedness was from loans that advanced the debtor's business. The article should indicate that this indebtedness will not apply if the new indebtedness: (i) is consolidated with the pre-existing debt; or (ii) is taken to secure debtor's use or ownership of capital goods in a purchase money transaction; or (iii) is deemed expressly not subordinated to pre-existing debt by means of two- thirds vote of the existing creditors and two-thirds vote of new creditors, such votes to be registered irrespective of the class into which such creditors fall.

Rationale: Subordination of new to pre-existing debt accomplishes two policy purposes. First, it discourages the immediate refinancing of inefficient enterprises by subordinating this debt. Second, even if new debt is extended early for the newly reorganized company, the company must demonstrate good corporate performance by demonstrating the capacity to satisfy the pre-existing debt. Complementing these two reasons, the restructuring plan confers on prior creditors a status that recognizes old debt as crucial to the maintenance of the debtor, a status similar to that accorded corporate bondholders under Article 116-17 of the Companies Law, which similarly cannot be created absent extraordinary corporate action.

It should be noted that for the troubled company to obtain outside assistance and produce a restructuring plan, it needs cash. This is expected to be an acute problem in pre-emerging markets such as Jordan since the majority of companies that are expected to file for restructuring are those that are close to being insolvent.

Early stages of a restructuring plan include financial diagnosis, building alternative financial models to reach the most effective action plan, and asset recovery. The latter, along with a schedule of deferred payments, may generate some cash that can be used to pay for the development of a restructuring plan that is the product of expert advice.

6 Problem Assessment: The present law provides no incentive toward restructuring as it does not stipulate how debt may be converted into equity for creditors.

Proposed Solution: A new article should expressly provide that debt be retired as per negotiations in restructuring and a three-quarters approval of all creditors, irrespective of class.

Rationale: As a debt-to-equity conversion will increase the number of shareholders of the

debtor, it will have the same effect on value per share as a decrease in total capital value. Specifically, the debt-to equity conversion is similar in effect to the decrease in indebtedness described in Articles 114-15 of the Companies Law, which contemplates a decrease in capital value to pay against a loss. In this case, Article 115 of the Companies Law requires a 75% approval of the shareholders voting. The present law does not recognize the appreciable impact to debt-to equity conversions on dilution of shareholder value. It should be added that the shareholders deliberating are, under Article 115 of the Companies Law, strictly those with a current interest in the firm in question.

Explicit recognition of debt-to-equity conversion in a reform law is vital. From the troubled company's perspective, a debt-to-equity conversion substantially reduces its debt service obligation and frees up badly needed cash to engage in the restructuring process as described in the relevant plan (although asset recovery leads to the sale of certain assets, other assets may need to be procured to achieve operational restructuring).

7 Problem Assessment: The present law does not ascribe to restructuring procedures a status that reflects a preference for this remedy to JAD.

Proposed Solution: Two new articles should be introduced to reflect the preference for restructuring over JAD as a matter of procedure. The first article should provide that classes of creditors and the debtor should aim to achieve agreement on a restructuring plan within 180 days of filing for restructuring. The plan should be approved by the debtor and majorities of each class as provided *infra*. Upon expiration of this period without an approved plan, the same article should assign the drafting of a plan to the trustees, with the mandate that same should observe, to the extent practical, those terms of the draft plan on which debtor and creditors are in agreement or in rough agreement. The article would stipulate that the trustees have a maximum of 60 days from the date of assignment to arrive at a restructuring plan and submit same to debtor and creditors for approval. The debtor and creditors would have 30 days from submission by the trustees to analyze and approve same. A second article would stipulate that, in the event of a failure to secure debtor and creditor approval through the first two methods, the debtor and the requisite majorities for creditor approval of the plan set forth *infra* agree to petition the court for an extension of 60 days to formulate a restructuring plan. Such extension will be granted by the court only if the court is satisfied: (1) that all parties have acted in good faith; (2) that standby financing for the restructured entity has already been secured for the initial 24 months in which a plan would be effective; and (3) that the plan is unlikely to work significant harm on any group of shareholders in the restructured entity.

Rationale: The proposed solution finds its logic in Articles 290 - 315 of the present law relative to concordat, which state an implicit preference for the avoidance of JAD. The same preference needs to be created to procedures later in the restructuring process, at stages similar to those surrounding the "simple agreement" in Articles 383-408 of the present law.

#8 Problem Assessment: Articles 290-315 on concordat and Articles 383-408 on the "simple agreement" fail to stipulate how debtor business will be conducted during and as a result of successful restructuring discussions.

Proposed Solution: New more specific articles are essential in this area. One article should provide that there is a presumption of debtor management during the restructuring but that a majority of the trustees, representing the creditors, have residual authority to contravene the authority of the decisions and actions of the owners, directors, officers and employees of the debtor firm. An additional article should stipulate the right to approve distributions of dividends, sales, pledges and mortgages, loans and indebtedness, any transfer of debtor property having a value in excess of some % of the debtor's capital as well as any proposal to alter the rights of debtor shareholders, partners or owners. The article should continue that such rights obligate the debtor to provide reasonable notice to the trustees of plans to make such transfers and sales and that such trustee powers are not subject to negotiation or modification for the first 24 months that the restructuring agreement takes effect.

Finally, a third article should stipulate that: (1) upon application to court by a majority of trustees and (2) evidence of either: (a) bad faith by the debtor; or (b) immediate and improbable harm to creditors by the debtor's conduct of business, a majority of trustees may exercise the following rights: the right of inspection without notice, the right to compel an accounting, the right to remove without cause officers and directors of the debtor and appoint replacements, the right to seize property or freeze assets without order of court.

Rationale: The Companies Law fails to stipulate exactly who has authority over many of these questions during the operation of a firm under ordinary circumstances. It is vitally important to ensure that existing and future creditors have the assurance that the trustees have maximum flexibility to act in the interests of creditors of and investors in the debtor to preserve value in the debtor. Some thirty-five articles of the present law describe trustee powers in either a vague manner or with specificity that limits the authority of the trustee. At the same time, the proposed solution makes it clear that the trustee authority is residual and that the debtor in compliance with prudent business practice need not fear interference. This assurance will give the debtor an incentive to seek resolution of debt problems through restructuring.

#9 Problem Assessment: Article 302 as to the concordat and Article 386 as to the "simple agreement" make accord on a restructuring plan too difficult by giving non-secured, general creditors too much influence in the approval process.

Proposed Solution: There should be a revision of Articles 302 and 386 of the present law to require: (a) debtor approval; (b) approval by only two-thirds of the creditors within each class of non-secured, general creditors and three-quarters of the creditors within each class of priority and secured creditors; and (c) approval of court.

Rationale: The proposed solution strikes a balance: the development and ratification of restructuring agreements should be made easy while ensuring maximum protection of creditors while the agreements are in effect. The three-quarters super majority requirement as to secured and priority creditors parallels the super majority requirements for extraordinary corporate changes such as mergers under Article 230 of the Companies Law. This higher standard is justified in view of the deference that should be accorded the expectations of secured parties and the importance of restructuring. No less than mergers under Articles 222-39 of the Companies Law, restructurings may entail such features as changes in corporate management or the configuration of classes of shareholders. A similar super majority vote for secured and

priority creditors should thus be required.

#10 Problem Assessment: There is at present no explicit connection between restructuring and JAD processes and the liquidation procedures of the Companies Law.

Proposed Solution: A new article should clarify that a debtor may elect liquidation under the Companies Law at any stage prior to debtor's acceptance of some restructuring plan as provided herein. Thereafter the article would provide that liquidation may only be accomplished by means of JAD.

Rationale: The threat of debtor's exercise of liquidation confers considerable leverage on the debtor in restructuring negotiations. However, there is a lack of clarity in Article 477 of the present law as to the application of the present bankruptcy articles to merchant companies. Liquidation under the Companies Law may not be available once a court has declared a debtor bankrupt. The proposed solution is aimed at both achieving clarity and expressing a preference for restructuring. The equivalent to a declaration in bankruptcy in restructuring processes is the failure to reach an accord after multiple attempts in discussions between the debtor on one hand and the creditors on the other. The proposed solution, in foreclosing liquidation by the debtor after the debtor has approved a restructuring plan, will help facilitate restructuring and the survival of efficient aspects of the debtor firm.

11 Problem Assessment: Liquidation procedures in the Companies Law are subject to considerable delay in practice and, if undertaken subsequent to a filing for restructuring, will prejudice the rights of creditors under an accepted restructuring plan.

Proposed Solution: A new article should require that once there is an approved restructuring agreement and the debtor then elects to liquidate: (1) such decision is undertaken only with the concurrence of two-thirds of the non-secured creditors and three-quarters of the secured and priority creditors; (2) the majority of trustees will designate one from among them who will become a liquidator, subject to the standard of care for trustees set forth *infra*; and (3) liquidation shall occur within three (3) months of creditor approval. Such liquidation shall be deemed a voluntary liquidation by the debtor.

Rationale: In effect, liquidation is a decision to revoke a restructuring plan and must be achieved with the bilateral concurrence of debtor and the creditors. The active involvement of trustees in the liquidation will ensure a fair representation of creditor concerns and a prompt liquidation.

#12 Problem Assessment: The present law does not speak to the consequences of a failure to observe the reorganization plan.

Proposed Solution: A new article shall provide: (1) that debtor's failure to observe the agreement shall be *prima facie* grounds for a creditor filing in bankruptcy, as authorized by two-thirds vote of each class of creditors; (2) that creditor's failure to fulfill the terms of the restructuring plan will: (a) restore the debtor's ability to unilaterally liquidate, notwithstanding the provisions herein; (b) disqualify any creditor in breach of the restructuring plan from recovery under JAD or as per the restructuring plan..

Rationale: Restructuring discussions entail a considerable expenditure of creditor time and invariably result in concessions by creditors. It is thus appropriate that the debtor cannot use liquidation as a subterfuge to escape the terms of a restructuring plan in effect. It is also appropriate that creditors be strictly held to the terms of the restructuring plan, observance of which exacts a considerable burden on the debtor. The proposed solution protects the legitimate reliance interests of creditor and debtor alike.

Procedures in Judicially Approved Discharge (Basis for Title IV of a Reform Law)

1 Problem Assessment: The present law does not clarify precisely the basic components of a plan for JAD.

Proposed Solution: A new article should stipulate that a plan in JAD needs to provide for full liquidation in exchange for full discharge of the debtor, accompanied by : (i) formal absolution of the individual debtor as a physical person obligated otherwise to pay indebtedness; (ii) formal absolution and dissolution of the legal person otherwise obligated to pay indebtedness

Rationale: The present law creates the ambiguity that a debtor may be fully liquidated yet remain a legal person. JAD is a desirable comprehensive and transparent process involving the participation of many economic actors. For this reason, it is a more attractive feature of a market liberal, economic reform effort. However, for reform JAD procedures to rival the less comprehensive and transparent liquidation process of the Companies Law, a reform law must not only accomplish liquidation but firm dissolution, as does the Companies Law.

2 Problem Assessment: The present law confers in a vague fashion primary authority for the contents of a JAD plan on the court, thus removing the formulation of the business and economic issues from the parties most immediately concerned with same.

Proposed Solution: A new article shall provide that trustees, designated for each class of creditors classified and assembled in the same manner as trustees in restructuring proceedings *supra*, shall draft the JAD plan and that the concurrence of a majority of trustees is required to submit the plan for creditor approval within: (i) six months of the filing of JAD proceedings if same are not preceded by restructuring efforts or (ii) two months of filing of JAD proceedings if same are preceded by restructuring efforts.

Rationale: Trustees must be chosen for their business acumen and judgment. Yet anomalously, Article 417 of the present law assigns trustees a responsibility for the conduct of the daily business of debtor but fails to take advantage of the trustee's business expertise in the formulation of a liquidation strategy. The solution proposed takes a fuller view of the trustee as a resource. Use of the trustees, as opposed to the courts or the creditors, will also expedite the formulation and execution of the JAD plan. The courts are burdened with other commercial matters and the creditors are often so numerous and possibly varied in interest that their direct participation becomes unwieldy.

3 Problem Assessment: Article 322 of the present law on voiding transactions during a " period of suspicion" does not provide incentive to file JAD proceedings.

Proposed Solution: A new revised article should shorten the time for the voiding of transactions from the current 18 months of Article 322 of the present law to one year following filing. Exceptions to voiding shall occur as to transfers pursuant to an approved restructuring plan, either partially or entirely effectuated. The article should continue by stipulating that nothing in same should preclude creditor actions for asset recovery on a theory of fraudulent conveyances.

Rationale: The voiding of transactions is a powerful tool but needs to be balanced against the preference in the reform law for resolution through restructuring. Hence, transfers pursuant to approved restructuring plans are protected. Secondly, it should be recognized that the present 2 year period of "suspicion" could have the effect of precluding the debtor from a voluntary filing in bankruptcy. One year seems to be more commercially reasonable (the equivalent period in the United States is 120 days).

4 Problem Assessment: The present law does not affirmatively and clearly state that in return for full discharge, a debtor cannot interpose objection once JAD proceedings begin.

Proposed Solution: A new article needs to state that debtor is barred from objection to the JAD plan.

Rationale: The debtor enters into JAD either after an attempt at restructuring or as a result of voluntary or involuntary filings for JAD. In all such events, the debtor will have had adequate opportunity to avoid JAD through resort to restructuring. This foreclosure of debtor objections will greatly accelerate JAD proceedings.

5 Problem Assessment: The present law on JAD proceedings is unclear on the implications an approved but not observed restructuring agreement should have on JAD proceedings.

Proposed Solution: A new article should clarify that in the event a debtor or any party not a creditor does not observe the restructuring agreement as approved, the court, the debtor, the creditors and their representatives are bound to observe the terms of same in JAD proceedings on all questions treated hereunder, to the extent permissible under law, including but not limited to questions concerning: (i) priorities among creditors set forth in the restructuring agreement; (ii) the timing and manner of sales and liquidations; (iii) terms of sale and liquidation to purchasers named in the restructuring agreement; and (iv) the status of preferred shareholders.

Rationale: Restructuring may actually be a preferable creditor alternative to JAD in cases where partial liquidation enables the surviving entity to operate more profitably. In addition, to encourage restructuring agreements, it is important for creditors to have the assurance that the terms of some can survive a debtor default and be enforced in JAD proceedings.

6 Problem Assessment: The present law does not precisely provide the relation between discharge and dissolution on one hand and liquidation on the other, thus leaving open the issue of whether discharge and dissolution might be accomplished prior to actual physical dissolution of assets.

Proposed Solution: New articles to the law should speak in the name of flexibility and modern commercial reality. A new article should provide that upon application by the debtor, the court may grant full discharge, and, in the case of a legal person, dissolution, prior to actual liquidation of the debtor's property.

Rationale: As will be emphasized *infra*, the possibility of protracted delay presents an impediment to the debtor as well as the creditor. All means under the general Jordanian legal framework should be utilized to move promptly toward discharge and dissolution. One of these tools is found in Article 841, sub article 2 of the Civil Code which imposes upon trustees a fiduciary duty of care for the property. Modern commercial realities also dictate that markets may shift and the passage of some time may actually increase the value of various holdings. Hence, the trustee may take control of and prepare the property for sale, subject to full accountability to the court. Meantime, the court may elect to review the facts and grant full discharge and dissolution so as to expedite the more prompt disposition of the JAD case. Article 334 of the Civil Code provides a precedent for the idea that payment on indebtedness may actually be extended without consideration. The proposed solution extends this idea to JAD proceedings.

Judicial Involvement in Business Restructuring and Judicially Approved Discharge (Basis for Title V of a Reform Law)

1 Problem Assessment: The present law increases chances of decisions in restructuring and JAD not taking economic factors into account through giving unilateral and discretionary decision-making authority to non-economic actors such as judges.

Proposed Solution: A new article should establish as a matter of construction that the reform law shall be construed not to confer implied or inherent powers upon the court, but to limit the powers of court to those expressly stated, notwithstanding other provisions of Jordanian law. The new article should continue by stating that in the absence of express delegation to the contrary, the trustees shall assume authority for the operations of the debtor's estate.

Rationale: Such provisions in the present law as Article 355, sub article 2, which gives the court the unilateral discretion to close the operations of a debtor business, along with the absence of express and implicit involvement of creditors, encourage the view that business and economic perspectives have little place in restructuring and JAD proceedings. The introduction of authority for economic constituencies such as debtors aned creditors will encourage filings for restructuring and JAD by demonstrating that they have a real voice in key determinations. Secondly, the participation of debtors and creditors more directly is likely to accelerate both restructuring and JAD proceedings by "putting on the table" in the most direct manner the competing economic interests involved.

#2 Problem Assessment: The present law gives rise to excessive delays.

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Proposed Solution: A number of new articles are necessary to streamline the present unwieldy process. They will necessarily modify the Code of Civil Procedure as well as the present law. An article is required for each of the following:

(1) the requirement that restructuring and JAD cases conclude within three years of filing, except as to: (a) cases beginning in JAD that were transformed into restructuring cases and *vice versa*; and (b) cases originating as simple debtor-creditor disputes that become restructuring or JAD proceedings as per *infra*, in either of which event the deadline for resolution will be 42 months from the time of the original filing (i.e., from the first filing in restructuring, JAD or simple-debtor creditor action). The article would go on to stipulate that a maximum one year extension will be granted (i) upon unanimous consent of the debtor and creditors; and (ii) upon a written statement of court setting forth precisely the economic grounds supporting the extension. Finally the article would provide that consistent with the position *supra*, discharge and dissolution can precede conclusion of a JAD or restructuring case
(2) the requirement that formal court hearings in restructuring and JAD proceedings be scheduled at the conclusion of the hearing just preceding and at intervals of no greater than 10 calendar days, with extensions to be agreed to by all creditors and the debtor within one calendar day of when they are proposed
(3) the requirement that restructuring and JAD proceedings be given top priority (i.e., priority over contract disputes and simple debtor-creditor actions) among commercial cases
(4) the requirement that in the event that a congested court docket at the time of filing does not make commencement of formal restructuring or JAD proceedings likely within 30 days of filing, any party may move for transfer of the proceedings to another venue able to commence judicial administration of the proceedings within 45 days of the original filing, with preference being given to alternate venues where the original debtor-creditor obligations were to be performed or where a substantial amount of business is conducted by the party seeking change of venue, without regard to nexus to the restructuring or JAD proceedings
(5) the requirement that suits originally filed as debtor-creditor actions and collection suits may be instantaneously transformed into restructuring or JAD proceedings, without the need for a second filing or a second submission of proof of claim, provided there is initial compliance with procedures for the initial suit and provided that the parties filing are the same as the parties that may file for restructuring or JAD proceedings *supra*

Rationale: Restructuring and JAD proceedings cannot feature lengthy delays as they necessarily deal with debtors *in extremis* and necessitate considering the interests of all creditors simultaneously. There is some analogue in the Code of Civil Procedure to expediting cases. Articles 60-61 of this code, for example, refer to expediting cases in simple debtor-creditor actions where debtor firms are not by definition in large financial trouble. *A fortiori*, expediting procedures should apply to restructuring and JAD proceedings.

3 Problem Assessment: Neither the present law nor the current framework of laws and practices governing the judiciary takes into account the sophistication (business and financial expertise) required of the judiciary to effectively enforce a reform law.

Proposed Solution: A new article should expand the concept of the reassignment of judges from that currently existing in Article 23 of the Judiciary Independence Law in order to permit a judge or a party to secure assignment of a judge having experience in the handling of restructuring and JAD proceedings.

Rationale: Restructuring and JAD proceedings require a through understanding of modern commercial behavior and finance, no matter what the country. In the United States, there are special courts for handling JAD matters. Presently, the issue of court reorganization is being considered in Jordan. The proposed solution is designed to ameliorate what is sure to be a challenge to the Jordanian court system, until such time as commercial or even formal JAD courts are formally established. It is designed to prevent reform in the restructuring/JAD area from being a captive to the larger issue of court reform.

4 Problem Assessment: Articles 355 and 414 of the present law confer excessive authority on the court to make business judgments, especially those respecting prevalent market conditions in the case of sales and liquidations pursuant to restructuring plans.

Proposed Solution: A new article should stipulate that once the court approves the plan of restructuring or JAD, it will be deemed to have consented to the particulars of all sales and liquidations pursuant thereto.

Rationale: Both the court and the trustees have a fiduciary duty to properly care for the debtor's estate. However, only the trustee has the business expertise and the time to monitor market conditions and achieve a good recovery. In addition to ensuring a good recovery and greater satisfaction, this proposed solution can also be considered along with the other reforms mentioned *supra* expediting the restructuring and JAD processes.

5 Problem Assessment: Such articles as Articles 344 and 347 of the present law do not take full advantage of the present system of a bankruptcy (JAD) and a representative judge to expedite restructuring and JAD proceedings.

Proposed Solution: A new article should require that either the JAD or the representative judge may approve a restructuring or JAD plan and that the approval of either of the two is sufficient to secure court approval, notwithstanding objection from one of these two judges.

Rationale: The intensive involvement of creditors, trustees and debtors to secure a mutually beneficial plan should not easily be disturbed by the court. There is precedent for the overlapping responsibility of bankruptcy and representative judges in instances involving matters such as the appointment of trustees and liquidation procedures, as provided in Articles 344 and 414 of the present law.

Miscellaneous (Basis for Title VI of a Reform Law)

1 Problem Assessment: The present law does not elaborate upon trustee powers.

Proposed Solution: In addition to the authority of trustees over some thirty-five articles of the present law, a new article should give the trustee the legal status of a super lienor who has first priority over all recorded and unrecorded security interests as of the time of the filing for restructuring or JAD proceedings. A second article would state that the trustee will have implied and inherent powers to act without court assent in areas in which, in the trustee's judgment, it is necessary or desirable to act in furtherance of the trustee's express powers.

Rationale: As noted *supra*, the participation of several creditors in restructuring or JAD proceedings is critical to their success. This success can only be insured if bilateral discussions between secured creditors and the debtor are curtailed, both via stay and the authority of the trustee as super lienor. Similarly, the creditors need to be assured of effective representation by the trustee. This assurance is given through a grant of broad discretionary powers that are not dependent on court approval.

2 Problem Assessment: The present law does not speak to possible qualifications and conflict of interest by a trustee.

Proposed Solution: A new article should clarify that the trustee acts in the joint interest of debtors and creditors with the dual goals of preservation of value in the debtor's estate and the attainment of maximum capital efficiency in restructuring and JAD proceedings. A second article would stipulate that a trustee cannot be and cannot become a "controlling person" of the debtor as defined *supra*.

Rationale: Clear standards for trustees are necessary to ensure the integrity of the office and the confidence of the business community.

3 Problem Assessment: The present law does not deal with perceived conflicts of interest in restructuring and JAD proceedings.

Proposed Solution: A new article should stipulate that a controlling person as defined *supra* might : (i) purchase property in the debtor's estate only upon court approval; and (ii) participate in restructuring and JAD proceedings, except as otherwise noted in the reform law.

Rationale: Oftentimes, a "controlling person" has the most intimate knowledge of the debtor's business and therefore is the best candidate to be a purchaser who might conduct the necessary economic reform of a company. Also the participation of "controlling persons" in the proceedings should be monitored to ensure an absence of self-dealing and the integrity of the restructuring and JAD processes. The reform law should authorize court intervention in these contexts.

4 Problem Assessment: The present law does not speak to the issue of judicial standing in JAD.

Proposed Solution: New articles should specifically state that only the debtors and creditors may be parties to restructuring or JAD proceedings, with the latter limited to those having a present financial claim against the debtor.

Rationale: Manageable restructuring and JAD proceedings are essential. It is also essential that standing emphasize the economic aspects of JAD and restructuring. This is why a reform law needs to amend or qualify Article 3 of the Code of Civil Procedure by confining the notion of parties in interest to present claimants against the debtor.

5 Problem Assessment: The present law allows for possible conflict of interest in representing the government's interests as creditor by providing for representation through one officer, the civil district attorney.

Proposed Solution: A new article should clarify that those government bodies, such as taxing authorities, that are creditors of the debtor shall represent themselves in restructuring and JAD proceedings.

Rationale: The idea that each government body *qua* creditor should represent its own economic interest is consistent with the reform law's desire to identify precise economic interests and ensure their representation. The solution proposed will ensure that the civil district attorney is not in a conflict of interest between emphasizing the overall vital state interest in efficiency on one hand and the representation of particular, conflicting government interests *qua* creditor on the other.

6 Problem Assessment: The present law does not distinguish or prioritize substantive versus procedural rights.

Proposed Solution: A new article needs to clarify that in case of a conflict between substance and procedure, substantive rights pursuant to the reform law assume precedence.

Rationale: While Articles 338-82 of the present law are dedicated to procedure, there is no definitive statement as to the interpretation of the law in cases of conflict between substantive and procedural provisions. For example, all provisions of a restructuring agreement entail an assertion of the substantive right of formulating such an agreement – yet some of such provisions may conflict with the Code of Civil Procedure or court procedures. The rule of interpretation resolves this conflict.

7 Problem Assessment: The present law is largely inaccessible to the business community, not only because excessive procedure promotes delays, as noted *supra*, but because the amount of procedure in the law makes it unintelligible to the lay person who needs to rely on it.

Proposed Solution: A new article should define procedure as a formal mechanism necessary to enforce economic claims made by one party over another, such as in JAD. The same article should further stipulate that primary procedural questions such as those directly and immediately exercised by debtor against creditor and *vice versa* and will be set forth in the reform law. The same article should then indicate that secondary procedural questions are those directly exercised by other than the debtor against the creditor, or *vice versa*, and that same shall be treated either in the Code of Civil Procedure or in rules of court adopted by the Ministry of Justice.

Rationale: The accessible commercial law enables the end user, the business, to know its rights quickly and easily. This means that a business can have a working idea of possibilities from the law even without the intervention of a lawyer, to say little of a judge. To accomplish this goal, the reform law not only needs to confine discussion of procedures to those most directly involving the debtor and creditor, it also needs to isolate secondary procedural principles in transparent but separate legal authority most typically used only by lawyers and judges, such as the Code of Civil Procedure or rules of court.

This is especially true in the JAD context. There, it is not only that businesses do not want to plough through highly technical and often arcane court procedures. It is that businesses cannot. The debtor, often in desperate financial straits, cannot afford a lawyer to explain such things. The debtor thus cannot take the vital first step in JAD, the act of filing, because the debtor cannot sort out the consequences of using the law on JAD through a maze of court procedure the debtor cannot understand. Nor is the creditor likely to be happy with a JAD law heavily oriented to procedure. Even for the creditor with resources and lawyers, a legal text oriented to procedure suggests delay. And delay makes creditors impatient. And when creditors become impatient, they avoid use of the law in favor of other means to obtain a settlement, including private, one-on one dealings with the debtor. The failure to use the law on JAD thereby increases public cynicism as to the law's value. The whole dynamic leads to a JAD and restructuring regime that is an eroded "dead letter", a situation not dissimilar to that existing in Jordan today.

8 Problem Assessment: The present law does not specify the relation between restructuring and JAD proceedings on one hand and criminal investigations and proceedings on the other.

Proposed Solution: A new article should stipulate that, the process of stay notwithstanding, criminal investigations and proceedings should not interfere with restructuring and JAD proceedings and *vice versa*.

Rationale: Criminal investigations into debtor behavior or even criminal proceedings should not affect the ability to proceed in the restructuring or JAD context. The former deals with penal aspects and aims at the conduct of individuals and the latter is concerned with the comprehensive economics of the debtor operation. Civil and criminal proceedings respecting debtor behavior can be mutually complementary. Taken alone, criminal proceedings can isolate the debtor and muzzle creditors having a knowledge of debtor's business practices. In contrast, transparent and comprehensive restructuring and JAD proceedings, where each participant acts pursuant to individual economic incentives, are possibly the only reliable way to extract information relative to firm behavior. This is most certainly the case in which the untoward aspects of debtor behavior are punished under penal laws rather than in restructuring and JAD proceedings.

PART II

ACTION PLAN

Central as bankruptcy and restructuring policy are to the administration of the entire regime of commercial laws, conformity to international best practices cannot be achieved by the simple introduction of one new reform law, however different and innovative relative to the law preceding. The entire legal regime must also be brought into conformity with the reform effort.

Accordingly, a preliminary review of the Jordanian landscape for commercial laws indicates that the adoption of a reform law identical, similar or substantially similar to that outlined in Part I means that changes to the enforcement regime for restructuring and JAD as well as related laws may have to be made. As of this time, the "thumbnail sketch" of an Action Plan along these lines is as follows, assuming official consideration and/or adoption of a reform law the second half of 2001:

Phase 1: Institutional Impact (to be initiated as early as Fall, 2001, three months prior to the anticipated adoption of a draft reform law and to continue through 2005, with each listing in rough order of priority)

-formal judicial education on the contents and practical application of a reform law (Judiciary Institute)

-formal and informal education of the legal and business community on the operation of a reform law (target audiences: likely community of potential trustees, bank credit and loan recovery departments, the accounting and management consulting professions)

-improvement of the information infrastructure within the judiciary (to ensure dissemination of judicial opinions concerning restructuring, JAD and debtor-creditor relations generally)

-coordination of the supervision staffs of the Central Bank and the Jordanian Securities Commission to ensure that supervisory standards are consistent with the reform law

-designation and education of restructuring/JAD specialists in the following governmental bodies: Ministry of Finance, Ministry of Justice, Ministry of Industry and Trade and the Privatization Department of the Prime Minister's office

Phase 2: Compulsory Amendment of Laws Related to Reform Law (to occur by the end of calendar year 2002, listed in rough order of priority)

-Companies Law (especially on corporate governance, extraordinary corporate changes and liquidation)

-Law on Fraudulent Conveyances (revised and to be used in lieu of bankruptcy and restructuring proceedings, to concern specific debtor misbehavior in a civil law context and provide a remedy to a particular creditor for specific misconduct)

-Code on Civil Procedure (if not superceded or supplemented by the procedures of the reform law or by accompanying court procedures)

-Law on Execution (for expeditious procedures)

-Income Tax Law (to establish tax incentives to creditors to encourage restructuring)

-Penal Code (to ensure that exercises of penal authority do not impede restructuring or JAD proceedings)

-Collection of Government Property Law (addressing government taxing authority as creditor)

Phase 3: Recommended Amendment to Related Laws (to commence in 2003 and continue pending substantial completion of Phase 2)

-Civil Code (on the insolvency of individuals)

-Law for the Placement of Property as Security for Immoveable Property as a Security for Debts

-Judiciary Independence Law

Laws in Phases 2 and 3 may, upon further review, move from one category to the other.

APPENDIX A

LIST AND SUMMARY OF MEETINGS

Over the course of Mr. Kelly's consultancy, the law firm and subcontractor International Business Legal Associates (IBLA) along with AMIR Consultant Majd Shafiq arranged a variety of meetings to provide local context for the many aspects of restructuring and JAD policy.

Mr. Kelly was always accompanied in various meetings by one or more of those listed below:

Dr. Salah-Eddin M. Al-Bashir - Managing Partner, IBLA

Rana Bin Tarif - Legal Researcher, IBLA

Majd Shafiq - AMIR Capital Markets Consultant

Khursheed Choksy - AMIR Capital Markets Component Leader

Elaborations as to the particulars of each meeting are set forth below. Telephone coordinates are given for those instances where those accompanying Mr. Kelly did not have substantial prior relations with the interviewee. Unless otherwise indicated, discussions were in English.

Monday, May 15

Salem Khaza'leh, Controller of Companies, Ministry of Industry and Trade (tel.: 560 7191) – the meeting was one hour and fifteen minutes and focused on the need to use restructuring to minimize liquidation, the social stigma of present bankruptcy and simplified JAD and restructuring procedures. Mr. Shafiq and Ms. Bin Tarif accompanied Mr. Kelly. Mr. Khaza'leh discussed his points in Arabic.

Samir Abu Lughod, Partner, Arthur Andersen (tel.: 552 6111) – the meeting lasted 45 minutes and focused on the current bilateral resolution of debtor-creditor disputes, restructuring as a preferable alternative to bilateral resolution and the willingness of Arthur Andersen to assume advisory and trustee responsibilities in restructuring and JAD proceedings. Mr. Shafiq and Ms. Bin Tarif accompanied Mr. Kelly.

Tuesday, May 16

Ali Hamadah and Abdel Dmor, Assistant General Manager for Credit Risk and Attorney for the Housing Bank for Trade and Finance, respectively (tel.: 461 6090, 560 2142, respectively) – the meeting lasted one hour and focused on credit standards and bank recovery procedures, the recordation of security interests and the need for reform of bankruptcy procedures. Mr. Hamadah served as principal spokesman and relayed his points in Arabic. Mr. Shafiq and Ms. Bin Tarif accompanied Mr. Kelly.

Abrahim Amosh , Private Commercial Attorney (tel.: 554 0456) – the meeting lasted one hour and focused on the need for tax incentives to encourage creditors to reform restructuring and JAD processes as well as the interviewee's experience negotiating problem loans. Ms. Bin Tarif accompanied Mr. Kelly.

Wednesday, May 17

Dr. Tayseer Abdel Jaber, Commissioner Jordan Securities Commission – the meeting lasted 45 minutes and focused on the current ability of accounting standards to identify problem credits and the capacity of current Commission disclosure requirements to identify corporate financial problems. Mr. Shafiq and Mr. Choksy accompanied Mr. Kelly.

Abrahim Harb, Director of the Judiciary Institute (tel.: 551 2507) – the meeting lasted 45 minutes and focused on the integration of formal instruction on restructuring and JAD into the Institute's curriculum for the education of newly appointed judges. Ms. Bin Tarif accompanied Mr. Kelly.

Sunday, May 21

Dr. Maher Al-Waked, General Manager, Industrial Development Bank (tel.: 464 2216) – the meeting lasted 45 minutes and focused on the inadequacy of current liquidation procedures and the implications of a reform law on restructuring and JAD for the Jordanian banking community. Mr. Shafiq and Ms. Bin Tarif accompanied Mr. Kelly.

Dr. Ahmad H. Mustafa, Deputy Governor, Central Bank of Jordan (tel.: 463 0301) – the meeting lasted 45 minutes and focused on why the business community does not use the current law and the implications of reform for Central Bank supervision. Mr. Shafiq and Ms. Bin Tarif accompanied Mr. Kelly.

Judge D. Saeed Al- Hiajneh, Appellate Judge – the meeting lasted one hour and fifteen minutes and focused on subject matter jurisdiction and the current scope of the law on JAD, the importance of specialized courts for restructuring and JAD matters and the lengthy court processes attending the current law. The interviewee made his points in Arabic. Dr. Salah Al-Bashir and Ms. Bin Tarif accompanied Mr. Kelly.

Monday, May 22

Judge Sharief Rimawi, Private Commercial Attorney (and former judge) – the meeting lasted one hour and fifteen minutes and focused on the opportunities for delay in restructuring and JAD proceedings presently, especially as regards delay of court hearings and execution against property, both of which argue for expeditious procedures in a reform law. The interviewee made his points in Arabic. Ms. Bin Tarif accompanied Mr. Kelly.

Tuesday, May 23

Dr. Said Nabulsi, Chairman, Association of Certified Financial Professionals – the meeting lasted one hour and the focus of discussion was the possibility of reform of the current Jordanian regime for restructuring and JAD, both from the stand point of support from the financial community and as an aspect of overall judicial reform. Mr. Choksy and Mr. Shafiq accompanied Mr. Kelly.

APPENDIX B

LAWS REVIEWED

(listed in rough order of importance)

Articles on Reorganization and Bankruptcy in the Commercial Code

Companies Law (articles including but not limited to liquidation)

Civil Code (articles on secured interests and debt rescheduling)

Code of Civil Procedure (articles on parties in interest, standing in litigation)

Law on Execution

Investment Promotion Law

Analysis also entailed a review of judicial decisions.